

Managing complex discrimination and safeguarding matters



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Emerging issues

Disability discrimination

- Schools seeking advice on making reasonable adjustments for students with additional needs prior to and during enrolment, and lawfulness of disciplinary action.
- Current consultation on the Disability Education Standards 2005 to include early childhood education and care sector.

Common questions

- Can schools ask parents to contribute to funding the reasonable adjustments?
- How do schools balance the safety of students and their obligations to make reasonable adjustments?
- How should schools respond to parents who are resistant to acknowledging that their child has a disability?

Other developments

- Proposed changes to strengthen anti-vilification laws.
- Criminal offence of doxxing.
- Proposed extension of doxxing laws to targeting of marginalised groups.
- *Kaplan v State of Victoria* (No 8) (2023) FCA 1092



Disability discrimination

Key principles

- Schools are required to make reasonable adjustments for students with disabilities.

Key exceptions

- The adjustments are not reasonable.
- The student would not derive any substantial benefit even if adjustments were made.
- The adjustments would impose an unjustifiable hardship (DDA only).
- Discrimination is reasonably necessary to protect health, safety or property.





Disability discrimination

Connor v Queensland (Dept of Education and Training) (No 3) **[2020] FCA 455; [2021] FCAFC 21**

- Beau Connor had a range of disabilities, including from Autism Spectrum Disorder, Pervasive Development Disorder, Oppositional Defiant Disorder, Attention Deficit Hyperactivity Disorder.
- Beau alleged that the Respondent discriminated against him by:
 - Suspending him for a total of 88 days
 - Subjecting him to physical restraint, seclusion and isolation on 25 occasions
 - Failing to provide him with a “Functional Behaviour Assessment” or a “Behaviour Plan”
- All grounds were dismissed on the basis that the treatment was because of Beau’s disruptive or violent behaviour, or because he was distressed.
- Caution for Victorian schools: test for discrimination broader and easier to satisfy under the *Equal Opportunity Act* (no comparator test for less favourable treatment).



Actions points for schools

Develop a framework to support staff to enquire about a student's needs or disability with sensitivity

Review your enrolment policy and terms and conditions for gatekeeping practices

Develop a suite of template documents to support you and your team to obtain further information about a student's disability

Consult with the student and the family on a regular basis as required

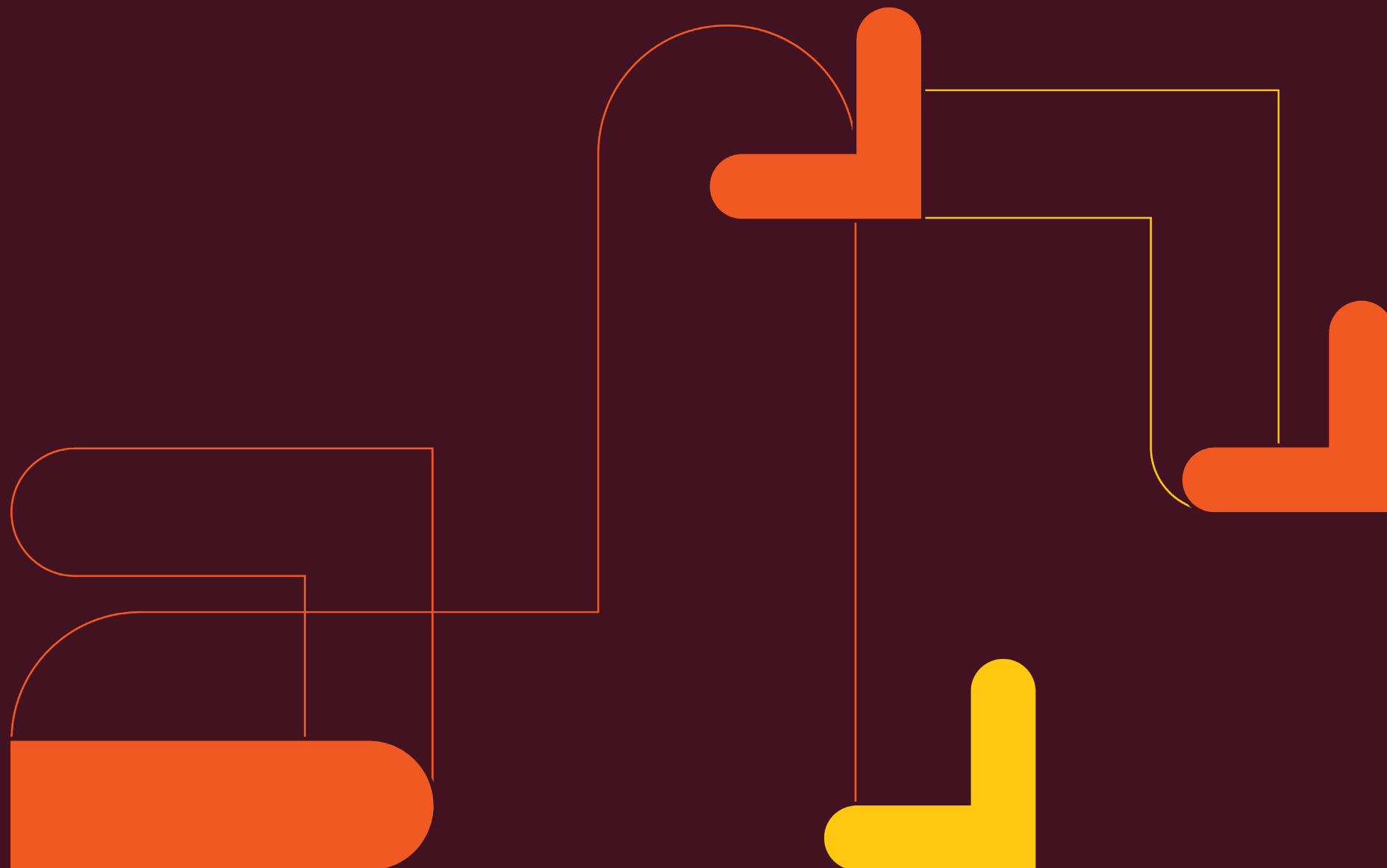
Consider recommendations from allied health practitioners

Ensure you comply with record keeping obligations

Maintain communication with key staff members



Complex safeguarding matters





CCYP Annual Report 2023-2024

CCYP Annual Report 2023-2024

- Sexual misconduct has been the most common conduct type in non-government Catholic and non-government (31% and 35% respectively).
- 23% of allegations in the education sector were made against people who were not registered teachers.

Key issues for schools:

- Managing child safety investigations, including conduct between students
- Suspension and disciplinary action
- Education and restorative processes v punitive processes





Managing child safety investigations

In some cases, the Reportable Conduct Scheme requires organisations to report historical allegations made against staff*

Key issues

- Investigating allegations which did not occur at the school
- Investigating stale allegations
- Taking a trauma-informed and procedurally fair approach
- Contacting reporters, staff, witnesses who may not want to be interviewed
- Maintaining privacy and confidentiality
- Making findings under the Reportable Conduct Scheme





Child safety investigations

Victorian Ombudsman recently released report on the Department of Education's handling of child sexual abuse allegations at Victorian primary school. It was found that the Department's response to the allegations and disclosures of sexual abuse at the time was inadequate, and in some respects seriously so.

Key findings by the Ombudsman:

- The School was not provided with accurate advice or sufficient support by the Department.
- The children's parents were not informed or given support.
- The first child was interviewed without appropriate expertise or support.
- The Department did not check whether there were other potential victims.
- The information provided to parents was not adequate.
- The Department did not conduct an internal review of its response to the disclosures.



Historical report

Ace College informs you of allegations made by a former student of Ace College, X, against one of your teachers, Mr M.

X alleges that Mr M took a special interest in her because her parents were separating, and he often asked X to stay back after school. The alleged conduct occurred when X was in year 9 about 10 years ago. X claims that although the conversations would start as wellbeing check-ins, Mr M would ask personal questions about her dating life and whether she was sexually active. X alleges that Mr M connected with her on social media and often messaged her late at night. X claims that it was common knowledge that Mr M was a creep, and lots of other students reported similar conduct.

The subject of allegations is well-liked and has been appointed as head of campus next term. There have been no previous child safety incidents while they have been employed at your school. You are aware that Mr M has depression and anxiety.

What are the key issues?

What are your reporting obligations?

What are the issues that may arise in an investigation?

Questions?



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